

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In the Matter of:)	MB Docket No. 13-189
)	
Applications for Consent to)	BALCDT-20130619 ADJ;
Assignment of Television Station Licenses)	BALCDT-20130619 AEZ;
from Subsidiaries of Belo Corp. to)	BALCDT-20130619 AFA;
Subsidiaries of Sander Holdings Co. LLC and)	BALCDT-20130619 AFJ;
Tucker Operating Co. LLC)	BALCDT-20130619 AFL;
)	BALCDT-20130619 AFM;
)	BALCDT-20130619 AFN

To: Chief, Media Bureau

OPPOSITION TO PETITIONS TO DENY

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SUMMARY

As Gannett Co., Inc., explains herein, the transaction described in the captioned applications clearly complies with the Commission's rules and advances the public interest. Neither petition to deny states any basis for delaying, denying or conditioning any of the applications. The petitions are based on unsubstantiated assertions and speculation, and at bottom represent an effort to hijack this transaction in order to advance broader policy goals at issue in Commission rulemaking proceedings.

One group, represented by Georgetown University Law Center's Institute for Public Representation and Free Press, concedes that the transaction complies with the law and regulations. It misconstrues the specific sharing arrangements at issue, and it encourages the Commission to use this transaction inappropriately as a vehicle to change its rules and policies.

The other group, comprised of DIRECTV, Time Warner Cable ("TWC"), and the American Cable Association ("ACA"), rehashes the same arguments that the Bureau repeatedly has rejected in response to TWC's and ACA's petitions to deny previous broadcast transactions. These filers fail to offer any reason why the Bureau should reach a different conclusion in this proceeding. They also mischaracterize the relationship among the parties to the transaction, and they attempt to use this transaction as a rulemaking forum to advance their private business interests.

Neither this transaction nor the petitioners' objections are novel. The Bureau should apply the Commission's carefully developed rules, policies, and clear precedent, and accordingly it should reject the petitions and grant the applications promptly.

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OPPOSITION TO PETITIONS TO DENY

Gannett Co., Inc. (“Gannett”), by its counsel, opposes the two petitions to deny in this matter, neither of which demonstrates any basis for delaying, denying or conditioning any of the above-captioned applications. The captioned applications and a series of other related applications seek Commission approval for a transaction in which Gannett will acquire control of Belo Corp. (“Belo”) and ownership of Belo stations in ten markets in which Gannett does not have any media properties, and in which independent third-parties Sander Holdings Co. LLC (“Sander”) and Tucker Operating Co. LLC (“Tucker”) will acquire the Belo stations in markets in which Gannett already owns newspaper and/or television broadcast properties (the “Transaction”). In those markets where Sander and Tucker are acquiring stations, Gannett will provide certain services to Sander and Tucker pursuant to agreements negotiated between the parties. The terms of those agreements vary because each is calibrated to the particular station(s) and market circumstances. As described below, the captioned applications — and the entire Transaction — comply with the Commission’s rules and advance the public interest.

The petitions rely on speculation and misleading statements in attempts to manipulate this Transaction to advance their authors' own policy agendas on subjects that the Commission is separately considering in rulemaking proceedings. One petition — filed by a group represented by the Georgetown University Law Center's Institute for Public Representation and Free Press (collectively "IPR")¹ (the "IPR Petition") — concedes that the Transaction complies with the law and the applicable Commission rules, but encourages the Commission to use this Transaction as a vehicle to change its rules and policies in an inappropriate forum. Moreover, it simply mischaracterizes the sharing arrangements at issue. The other petition — filed by the American Cable Association ("ACA"), Time Warner Cable Inc. ("TWC")², and DIRECTV LLC ("DIRECTV") (collectively the "MVPD Objectors") (the "MVPD Petition") — rehashes arguments previously rejected by the Bureau, tries to use this routine transaction as a rulemaking forum, and mischaracterizes the agreements between the parties.³ It is self-serving, and the Media Bureau should reject it out of hand.

Neither the Transaction nor the objections raised are novel. Gannett asks only that the Bureau apply the Commission's rules, policies, and clear precedent, which

¹ IPR consists of Free Press, NABET-CWA, TNG-CWA, National Hispanic Media Coalition, Common Cause, and Office of Communication, Inc., of the United Church of Christ.

² TWC identifies itself as an informal objector rather than as a petitioner. MVPD Petition at 1 n.1.

³ Gannett notes that there are, at minimum, serious questions as to whether any of the petitioners have standing, as demonstrated in the separate opposition that Belo is filing concurrently. Although Gannett refers to the filings by IPR and the MVPD Objectors as petitions, this should not be construed as a concession that any of the filers possess standing.

unequivocally confirm that the petitions are without merit.⁴ Accordingly, the Bureau should reject the petitions and grant the applications promptly.

I. THE TRANSACTION WILL GENERATE IMPORTANT PUBLIC INTEREST BENEFITS IN COMPLIANCE WITH COMMISSION RULES.

In today's environment, local media companies like Gannett face increased competition from companies operating across a wide range of media platforms, including an ever-expanding array of Internet and mobile services.⁵ While these services compete with Gannett for viewers, digital users and local advertising dollars, most do not provide any local news, weather, emergency information, or other localized services to the public. In contrast, Gannett places intense emphasis on its local broadcast journalism, which regularly is recognized with top awards. For instance, within the last four years alone, Gannett stations won eighteen national Edward R. Murrow Awards and 160 regional Edward R. Murrow Awards honoring their outstanding achievements in television journalism.⁶ Belo similarly has been recognized for its longstanding commitment to public service and journalism, and this shared culture was important to both companies in deciding to bring the Belo stations under Gannett's stewardship for the future. Gannett's acquisition of Belo's television stations in ten markets will allow Gannett to achieve economies of scale and employ infrastructure that will support its mission of

⁴ The applications concerning the Transaction other than those captioned hereon are unopposed. The MVPD Petition contests only five applications as to three markets in which Gannett does not seek consent to acquire any stations; and although the IPR Petition caption identifies applications concerning the transfer of control of Belo stations to Gannett, its arguments all concern only the Belo/Sander and Belo/Tucker assignment applications. In the alternative and to the extent necessary, Gannett opposes the IPR Petition as to all applications captioned thereon.

⁵ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Fifteenth Report, FCC 13-99, ¶ 196 (rel. July 22, 2013).

⁶ See Radio Television Digital News Association, Edward R. Murrow Awards, http://rtdna.org/content/edward_r_murrow_awards.

local public service and its strong commitment to local journalism across all of the communities that its stations serve.

The Transaction also will serve the public interest in those markets where Sander and Tucker are acquiring Belo's stations. Sander and Tucker are small entities, each run by respected leaders in the broadcast community with extensive industry experience.⁷ Sander and Tucker will be entering a broadcast market where, like Gannett, they face more and more competition every day. Through the parties' sharing agreements, which are tailored to the circumstances of each market, Gannett will make available resources and support to Sander and Tucker that will enhance their ability to compete and serve the public.⁸

⁷ Jack Sander, the owner of Sander, is a member of the Broadcasting & Cable Hall of Fame and winner of the Broadcasting & Cable "Broadcaster of the Year" Award, and he has served as President-Chairman of the NBC Television Affiliates and in key roles with the National Association of Broadcasters. He has served as Vice Chairman of Belo, President and Vice President of Belo Television Group, President of Belo Media Operations, and Chairman of Citadel Broadcasting. Ben Tucker, who is President and owner of Tucker Broadcasting of Traverse City, Inc., which is the licensee of WGTQ(TV), Sault Ste. Marie, Michigan, and WGTU(TV), Traverse City, Michigan, has served as President and CEO of Fisher Communications Inc., as Television Board Chairman of the National Association of Broadcasters and as the Chairman of the Board of Directors of the CBS Television Network Affiliates Association.

⁸ As Commissioner Pai recently stated, "[a]s broadcasters' share of the advertising market has shrunk in the digital age, television stations must be able to enter into innovative arrangements in order to operate efficiently. JSAs [Joint Sales Agreements] and SSAs [Shared Services Agreements] allow stations to save costs and to provide the services that we should want television broadcasters to offer." Oversight of the Federal Communications Commission, Hearing Before the Committee on Commerce, Science, and Transportation of the United States Senate, 113th Cong. 8 (2013) (statement of Ajit Pai, Commissioner, Federal Communications Commission), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-319469A1.pdf.

II. THE IPR PETITION SHOULD BE REJECTED BECAUSE THE TRANSACTION FALLS CLEARLY WITHIN THE LIMITS OF THE COMMISSION'S WELL-ESTABLISHED RULES AND POLICIES.

A. The Instant Transaction Raises No Novel Issues Necessitating Full Commission Review Or Even Lengthy Bureau Review.

The Transaction complies with all Commission rules and policies, which IPR concedes. In fact, the Transaction does not approach the limits of established rules and policies or raise any novel issues, reflecting the parties' narrow and careful approach. IPR's misdirected request for full Commission review underscores its goal of changing the Commission's rules. Granting the applications is legally correct and well within the Bureau's delegated authority.

The IPR Petition begins by conceding that the sharing arrangements do not violate the Commission's rules.⁹ It repeats this concession elsewhere: "even when a proposed transfer would not violate a specific rule"; "A Transfer May Comply with Bureau Precedent . . ."; "even in the absence of any technical rule violation."¹⁰ As IPR acknowledges, it is clear that the agreements at issue in the captioned applications are well within the limits of what is permissible under the rules:

- In the Phoenix and St. Louis markets, in which Gannett owns television stations, the SSAs do not provide for Gannett to supply any programming to Sander's stations. Far from evading Commission rules, the SSAs in these markets do not even approach

⁹ IPR Petition at i (stating arguments based on the assumption that the sharing arrangements "do not outright violate the rules").

¹⁰ *Id.* at 12, 13, 14. *See also id.* at 8 ("Petitioners acknowledge that the Media Bureau has allowed similar sharing arrangements . . .").

established limits. In addition, there is no joint sales agreement between Gannett and Sander in these markets.¹¹

- In each of the Louisville and Portland markets, where Gannett owns a daily newspaper but no television stations, the JSA contemplates that Gannett may provide up to 15% of the programming for Sander's station.¹² IPR cannot identify any rule that this contravenes because it contravenes no rules.
- In the Tucson market, where Gannett has an ownership interest in a newspaper, the Transition Services Agreements ("TSAs") do not contemplate that Gannett would supply any programming to Sander's or Tucker's station.¹³ In addition, there is no joint sales agreement between Gannett and Sander or Tucker in that market.

The IPR Petition resorts to misleading statements in an attempt to manufacture a legal issue. It emphasizes that the Transaction is structured so that Gannett is not acquiring stations for which a waiver would be required. Yet the fact that Gannett is *complying* with the ownership rules and not acquiring certain stations is hardly a ground for concern. Further, IPR deceptively asserts that "[t]he Commission has never allowed a newspaper to acquire a broadcast

¹¹ The Media Bureau, consistent with the applicable Commission rules, has approved numerous transactions in which one station owner would provide programming and/or sales services to another station owner pursuant to sharing arrangements. *See, e.g., SagamoreHill of Corpus Christi Licenses, LLC*, 25 FCC Rcd 2809 (2010); *Nexstar Broadcasting, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 3528, 3533 (2008); *Chelsey Broadcasting Company of Youngstown, LLC*, Memorandum Opinion and Order, 22 FCC Rcd 13905 (2007); *Malara Broadcast Group of Duluth Licensee LLC*, 19 FCC Rcd 24070 (2004).

¹² *See* Louisville/Portland JSA § 4.2.

¹³ Even taking IPR's policy goals into account, it is unclear why it views the term of the TSAs as problematic. *See* IPR Petition at 27.

station in the same market without a waiver of the NBCO rule” as if that is happening here.¹⁴
The only reason for this obfuscation is to create the illusion of controversy where none exists.

The Commission has fully considered what should and should not be attributable in both the same-media and cross-media ownership contexts.¹⁵ The rules at issue here are explicit and precise, even if they do not match IPR’s policy preferences. The parties to the Transaction not only have respected those restrictions, they have negotiated agreements that are far more limited than what is permissible.

B. The IPR Petition Is Filled With Mischaracterizations And Baseless Speculation.

IPR repeatedly mischaracterizes the agreements, leaning on speculative claims to do so. As merely one example, it misstates that the SSA in St. Louis “will inevitably lead to sharing of news stories and journalists.”¹⁶ In reality, the SSA does not provide for Gannett to supply Sander with any programming in that market. Underpinning these mischaracterizations is the fact that IPR paints the sharing arrangements with a broad brush, not taking into account — or perhaps purposefully ignoring — the particular nature of each agreement. Beyond merely conflating the sharing arrangements, IPR asks the Bureau to ignore the portions of the sharing arrangements that it arbitrarily deems unimportant. In particular, while the IPR Petition attempts to downplay the provisions of the sharing arrangements that provide for the licensee’s control of

¹⁴ *Id.* at 8.

¹⁵ *See, e.g.*, 47 C.F.R. § 73.3555 Note 2(i) (providing that a normally non-attributable ownership interest in a broadcast station, cable television system, or daily newspaper is attributable if certain specific conditions are met); 47 C.F.R. § 73.3555 Note 2(j) (specifying the conditions under which a time brokerage agreement will be attributable). The conditions for attribution are not met here.

¹⁶ IPR Petition at 34.

the stations, these provisions govern the parties, and they demonstrate that Gannett will not control the Sander or Tucker stations.¹⁷

Lacking grounds from which to make persuasive legal arguments, the IPR Petition relies on speculation. With no sound basis for doing so, it presumes the loss of a voice from agreements that adopt only limited sharing arrangements well within existing Commission rules.¹⁸ The IPR Petition is permeated with phrases such as the following: “[i]t is reasonable to *assume*”; “subscribers *may* now find that . . .”; “*could* very well”; “will increase the *likelihood*.”¹⁹ The Bureau should not accept the IPR Petition’s invitation to reach a decision based on guesswork.

¹⁷ See, e.g., IPR Petition at 17 (dismissing as “boilerplate” contractual provisions “giving Sander ultimate authority over programming”). In the very next sentence, the IPR Petition concedes that “Sander is contractually obligated to maintain control over station operations, including programming, editorial policies, and human resources; to maintain the facilities and pay all operating costs of the station.” *Id.*

¹⁸ Moreover, the allegation that the Transaction will affect present levels of employment at Belo stations is speculative and not relevant to the Bureau’s evaluation of the Transaction. See *Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC*, 595 F.2d 621, 628 (D.C. Cir. 1978) (“The Supreme Court has consistently held that the use of the words ‘public interest’ in a regulatory statute is not a broad license to promote the general public welfare, and that these words take meaning from the purposes of the regulatory legislation. In view of the purposes of its regulatory legislation, the FCC analyzes the employment practices of its licensees only to the extent those practices affect the obligation of the licensee . . .”) (internal quotation marks omitted); *National Ass’n of Broadcast Emp. and Technicians, AFL-CIO v. FCC*, 346 F.2d 839, 841 (D.C. Cir. 1965) (holding that “an allegation limited to this kind of injury [possible loss of employment in connection with assignment of a station license] does not require inquiry and consideration by the Commission”).

¹⁹ IPR Petition at 17, 18, 22, 26 (emphasis added).

C. The Objections Raised By The IPR Petition Actually Represent Requests To Change Existing Commission Rules And Policies.

IPR's objections are properly considered only in the context of a rulemaking proceeding, and not in the Bureau's review of the Transaction.²⁰ Demonstrating the IPR Petition's policy focus, it objects to features of the parties' agreements that have been addressed squarely by the Commission. For example, IPR objects to Gannett's options,²¹ but the Commission has determined that options are not attributable unless exercised.²² Similarly, while the IPR Petition objects to Gannett guaranteeing third-party loans to Tucker and Sander,²³ the Commission already reviewed this issue and determined that these arrangements are not attributable.²⁴ As stated above, the Commission has examined ownership and attribution issues closely and has established bright-line standards, and the Transaction complies fully with those standards.

The non-transaction-specific nature of the IPR Petition also is demonstrated by its digressive effort to seek reversal of the long-standing waiver approved by the Commission for

²⁰ Regardless, broadcasters have amply demonstrated that sharing arrangements serve the public interest by enabling broadcasters to create operational benefits in order to provide new or expanded local news and other programming and benefits to their communities. *See, e.g.*, Comments of the National Association of Broadcasters, MB Docket No. 09-182, MB Docket No. 07-294, at 57-69 (Mar. 5, 2012).

²¹ *See* IPR Petition at 17, 19, 24-25, 33.

²² 47 C.F.R. § 73.3555 Note 2(e) (stating that "options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected"). *See also* *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 1097, 1112-13 (2001) [*"Attribution Reconsideration"*] (addressing treatment of options).

²³ *See* IPR Petition at 6-7.

²⁴ *See* *Attribution Reconsideration*, 16 FCC Rcd at 1112; *see also* *Malara*, 19 FCC Rcd at 24076 (noting that "loan guarantees are not attributable, and that options are not attributable until exercised").

Gannett's properties in the Phoenix market.²⁵ Doubling down on its agenda-driven request for unnecessary Commission attention, IPR seeks to use the Transaction as an excuse to advocate its views on that unrelated matter, which is a final and unreviewable order.²⁶ As the Supreme Court has stated and the Commission has recognized, "rulemaking is generally a better, fairer, and more effective method of implementing a new industry-wide policy than is the uneven application of conditions in isolated license [related] proceedings."²⁷ Thus, rulemaking is the only appropriate context in which to consider IPR's requests for policy change.

²⁵ IPR Petition at 15-16. Gannett notes that the petition for reconsideration to which IPR refers is procedurally infirm because it asked for reconsideration of an unreviewable interlocutory decision. In 2006, Gannett timely filed a license renewal application for KPNX, which included a request for waiver of the newspaper/broadcast cross-ownership ("NBCO") rule. In 2008, the Commission granted Gannett's Phoenix NBCO waiver request, finding that the waiver was warranted for reasons including "the synergies that have already been achieved from the newspaper/broadcast station combination, the new services provided to local communities by the combination, [and] the harms . . . associated with required divestitures." *2006 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order on Reconsideration, 23 FCC Rcd 2010, 2055 (2008). Subsequently, the *uncontested* license renewal application of KPNX was granted and became a final order. Grant of Gannett's waiver only ripened as a final action in the context of KPNX's renewal application, which the petition for reconsideration did not and could not contest. The NBCO waiver was raised in *Prometheus Radio Project v. FCC*, 652 F.3d 431, 456 (3d Cir. 2011), but the Third Circuit declined to review the renewal grant and accompanying waiver, citing the D.C. Circuit's exclusive jurisdiction over licensing proceedings. Indeed, the Commission has already acknowledged that its grant of the waiver was ancillary to action on Gannett's license renewal application, and thus any challenge to it could have been lodged only in the context of the license renewal proceeding. *See* FCC Brief at 61-62, *Prometheus Radio*, 652 F.3d at 431.

²⁶ IPR also relies extensively and inappropriately on the *Media Council Hawai'i* case, which involves facts and agreements that are entirely distinct from those at issue here. *See* IPR Petition at 8-9 (citing *KHNL/KGMB License Subsidiary, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 16087 (2011) [*"Media Council Hawai'i"*]). And, as IPR concedes, "the Media Bureau decided to take no action" in that case. IPR Petition at 8.

²⁷ *Community Television of Southern California v. Gottfried*, 459 U.S. 498, 511 (1983) (internal quotation marks omitted); *see also* *Great Empire Broadcasting, Inc. and Journal Broadcast Corp.*, Memorandum Opinion and Order, 14 FCC Rcd 11145, 11148 (1999); *Stockholders of Renaissance Communications Corp. and Tribune Co.*, Memorandum Opinion and Order, 12 FCC Rcd 11866, 11887-88 (1997).

III. THE MVPD PETITION IS MERITLESS AND SHOULD BE SUMMARILY REJECTED.

The MVPD Petition, without acknowledging that it does so, repeats claims that the Bureau has rejected multiple times previously. Its self-serving and unsupportable claims are no more convincing or appropriate here than they have been on these prior occasions, and accordingly it should be rejected promptly.

A. The MVPD Petition Rehashes Failed Arguments That Belong Only In A Rulemaking Proceeding, Is Replete With Baseless Speculation, Mischaracterizes The SSAs And TSAs, And Is Blatantly Self-Serving.

The MVPD Petition seeks relief that serves only the private business interests of the MVPD Objectors, and not the public interest.²⁸ Given the MVPD Objectors' goal of changing the retransmission consent playing field, a rulemaking is the only appropriate forum in which to dispose of their arguments. All three MVPD Objectors have lobbied the Commission extensively to tip the retransmission consent balance in the same manner requested in their petition.²⁹ In fact, the petition itself asserts that its arguments "highlight the need for industry-

²⁸ Background on the MVPD Objectors reveals their policy focus and business motivations. ACA is a cable operator trade association that lists retransmission consent as first among the policy issues on which it engages in advocacy. American Cable Association, Issues, <http://www.americancable.org/issues> (last visited Aug. 8, 2013). TWC is the second-largest cable operator in the country, with revenue in 2012 alone of over \$21 billion dollars. Time Warner Cable Inc., *Form 10-K 2012*, at 34, available at <http://www.sec.gov/Archives/edgar/data/1377013/000119312513062081/d483194d10k.htm>. TWC does not even have any systems in the markets at issue in the MVPD Petition, underscoring that it is interested in this Transaction only as a vehicle to effect policy change. DIRECTV is one of only two DBS operators in the country, with over \$29 billion dollars of revenue in 2012, more than even TWC. DIRECTV, *Form 10-K 2012*, at 33, available at <http://www.sec.gov/Archives/edgar/data/1465112/000104746913001381/a2212949z10-k.htm>. Thus, TWC and DIRECTV each take in annual revenue that dwarfs the size of the Transaction by more than an order of magnitude.

²⁹ See, e.g., Notice of Ex Parte Presentation of American Cable Association, Time Warner Cable, DISH Network, DIRECTV, MB Docket No. 09-182, MB Docket No. 10-71 (Jan. 25, 2013); Comments of Time Warner Cable Inc., MB Docket No. 09-182, MB Docket No. 07-294 (Mar. 5, 2012); Comments of DIRECTV, LLC, MB Docket No. 09-182, MB Docket No. 07-294 (Mar. 5, (continued...))

wide reforms,” citing to outstanding notices of proposed rulemaking in this area.³⁰ It is clear that the policy-based arguments raised in the MVPD Petition should be addressed only in the context of the ongoing retransmission consent and ownership proceedings.

TWC and ACA have made these same arguments repeatedly with respect to previous broadcast transactions.³¹ Each time, the Bureau correctly rejected the arguments because — as here — there was no claim of any rule violation, and the petitions were replete with speculation.³² The Bureau repeatedly has seen through the MVPD Objectors’ transparent and procedurally inappropriate attempts to convert the petition to deny process into a rulemaking, and it has unambiguously rejected those attempts because it was “apparent” that the

2012); Comments of the American Cable Association, MB Docket No. 09-182, MB Docket No. 07-294 (Mar. 5, 2012); Comments of Time Warner Cable Inc., MB Docket No. 10-71 (May 27, 2011); Comments of DIRECTV, Inc., MB Docket No. 10-71 (May 27, 2011); Comments of the American Cable Association, MB Docket No. 10-71 (May 27, 2011).

³⁰ MVPD Petition at 13 n.37 (citing *Amendment of the Commission’s Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 26 FCC Rcd 2718, ¶ 23 (2011); *2010 Quadrennial Regulatory Review - Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.*, Notice of Proposed Rulemaking, 26 FCC Rcd 17489, ¶ 200 (2011)).

³¹ See *ACME Television, Inc.*, 26 FCC Rcd 5189 (Apr. 8, 2011) [“*ACME TV Inc.*”]; *AMCE Television Licenses of Ohio, LLC*, 26 FCC Rcd 5198 (Apr. 8, 2011) [“*ACME TV Licenses*”]; *Free State Communications, LLC*, 26 FCC Rcd 10310 (July 21, 2011) [“*Free State*”]; *High Maintenance Broadcasting, LLC*, BALCDT-20120315ADD, at 2 (Aug 28, 2012) [“*High Maintenance*”].

³² See *ACME TV Inc.*, 26 FCC Rcd at 5191 (denying the petition because “TWC has not argued that any supposedly increased bargaining position that it contends would be gained by the combined stations violates our rules”); *ACME TV Licenses*, 26 FCC Rcd at 5200 (denying the petition because “TWC makes no effort, beyond its generalized arguments, to demonstrate that the proposed assignment and related cooperative agreements violate our rules and precedent”); *Free State*, 26 FCC Rcd at 10312 (denying the petition because “[t]he gravamen of ACA’s petition . . . [concerns] one of the issues squarely under consideration in the Retransmission Consent Proceeding”); *High Maintenance* at 2 (denying the petition because TWC “provides no factual support for its allegations of ‘collusion’ and ‘price-fixing,’ but instead reiterates its ‘long expressed concern’ about [sharing arrangements], while citing comments filed in pending Commission rulemaking proceedings.”).

MVPD Objectors’ “real concern” was to rewrite the Commission’s rules in an improper context.³³ The Bureau repeatedly has “reaffirm[ed] that . . . rulemaking proceedings are the proper forum for consideration of the issues raised by TWC and others concerning the retransmission consent process.”³⁴ Strikingly, the MVPD Petition fails to reference *any* of these decisions. Because it fails to even cite — let alone attempt to differentiate — prior decisions in which the Bureau has rejected these same arguments multiple times, the MVPD Petition is seriously deficient and should be rejected out of hand.

Further, the policy arguments raised by the MVPD Petition bear no meaningful relationship to the instant proceeding, demonstrating that the MVPD Petition simply seeks yet another avenue to rehash policy arguments. The MVPD Petition objects to the sharing arrangements in three markets: Tucson, St. Louis and Phoenix. Yet it fails to raise plausible arguments against the arrangements in any of the three markets.

First, it is not plausible to claim that the Transaction would “eliminate competition” in the Tucson market between the stations and provide Gannett with “additional bargaining leverage.”³⁵ The Tucson stations at issue are owned by a single broadcaster today. After the Transaction, they will be owned and controlled by two separate broadcasters. In any event, the TSAs comply fully with law. The applicable Commission rule requiring “express authority of the originating station” for signal carriage places no limitations on using an agent to negotiate the terms under which such authority will be granted.³⁶ In addition, the Bureau has

³³ *ACME TV Licenses*, 26 FCC Rcd at 5200.

³⁴ *High Maintenance* at 2 (citing *ACME TV Licenses*, 26 FCC Rcd at 5198; *Free State*, 26 FCC Rcd at 10310).

³⁵ MVPD Petition at 10.

³⁶ 47 C.F.R. § 76.64(a).

determined that it is not contrary to rules or policies to act as or appoint a negotiating agent for retransmission consent.³⁷

Second, the MVPD Objectors incorrectly assert that the SSAs in Phoenix and St. Louis provide for Gannett to act as Sander's agent in retransmission consent negotiations.³⁸ The SSAs in these markets do not include such a provision, but even if they did it would not contravene any existing Commission rule or policy, as explained above. This lack of attention to the details of the Transaction exemplifies that the MVPD Objectors care about the Transaction only insofar as they can use it as a vehicle to pursue industry-wide policy changes.³⁹

The MVPD Objectors are trying to have it both ways: in policy proceedings, they argue that the existing retransmission system "is not working" to serve their interests and therefore seek legal changes;⁴⁰ and, at the same time, they persist in acting as if the legal changes that they seek already have been adopted, notwithstanding the Bureau's consistent rejection of that position. The Bureau should not countenance the MVPD Objectors' attempt to hold hostage a legally compliant broadcast transaction that will bring about real public interest benefits in order to extract self-serving conditions that at best are properly sought in a rulemaking

³⁷ See *ACME TV Inc.*, 26 FCC Rcd at 5189; *ACME TV Licenses*, 26 FCC Rcd at 5198; *High Maintenance* at 2.

³⁸ MVPD Petition at 6-7. Moreover, contrary to their assertions, the SSAs consistently have been on file and available for public review — review that the MVPD Objectors apparently did not undertake.

³⁹ Similarly demonstrating their lack of attention to the facts involved in the instant Transaction, the MVPD Objectors implausibly allege that Gannett will "collude" with Raycom Media in Tucson. MVPD Petition at 6 n.16. In fact, Gannett is entering into TSAs in those markets only with Sander and with Tucker and will not have any relationship with Raycom Media.

⁴⁰ Reply Comments of the American Cable Association, MB Docket No. 10-71, at 1, 72 (June 27, 2011).

proceeding. Consistent with its prior decisions,⁴¹ the Bureau should reject the MVPD Objectors' request for a condition prohibiting Sander or Tucker from appointing Gannett as an agent in retransmission consent negotiations. There is no legal or policy basis for imposition of such a condition, or any other, in this proceeding.

B. The MVPD Petition's Sherman Act Allegations Are Baseless And Have Been Rejected Previously.

TWC has raised the same flawed Sherman Act argument identified in the MVPD Petition previously without success, and again it fails.⁴² Despite the MVPD Objectors' baseless allegations of future "collusion,"⁴³ Gannett has agreed to act as an *agent* for Sander and Tucker in negotiations in the Tucson market upon their respective requests and subject to their respective authorizations, while Sander and Tucker retain independent decision-making authority over their retransmission terms with MVPDs.⁴⁴ As explained above, this type of arrangement has never been found to be unlawful. Accordingly, the MVPD Petition's antitrust argument "is speculative on its face and does not form a valid basis for a petition to deny."⁴⁵

⁴¹ See *ACME TV Inc.*, 26 FCC Rcd at 5191 (rejecting retransmission consent conditions requested by TWC; *ACME TV Licenses*, 26 FCC Rcd at 5201 ("There is, therefore, no legal basis to impose the constraints that TWC proposes on the stations in their retransmission consent negotiations in the context of this proceeding."); *Free State*, 26 FCC Rcd at 10311-12 (rejecting request to "condition any grant of the application to prohibit" purported "coordination" in retransmission consent negotiations); *High Maintenance* at 2 (rejecting request to "require the abandonment of [an] SSA as a condition of approval").

⁴² See *ACME TV Inc.*, 26 FCC Rcd at 5190 n.8; *ACME TV Licenses*, 26 FCC Rcd at 5199 n.6; see also *High Maintenance* at 2 n.5.

⁴³ MVPD Petition at 9.

⁴⁴ See TSA § 6.4. See generally Restatement (Third) Of Agency § 1.01 ("Agency is the fiduciary relationship that arises when one person (a 'principal') manifests assent to another person (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control, and the agent manifests assent or otherwise consents so to act.").

⁴⁵ *ACME TV Licenses*, 26 FCC Rcd at 5199 n.6.

Moreover, the MVPD Objectors' invocation of *United States v. Texas Television*⁴⁶ is incorrect and misleading, just as the Bureau has properly found.⁴⁷ First, a settlement does not establish any legal precedent. Second, the facts of that matter bear no resemblance to the proposed sharing arrangements related to this Transaction. Gannett, Sander, and Tucker have agreed to enter into sharing arrangements of a kind that has long been approved by the Bureau.

As the MVPD Objectors well know, no arrangement as limited as those at issue here has been disapproved by the Commission or by a court of law, or challenged by the Department of Justice. They have not even attempted to present a reason to reach a contrary conclusion here, having failed to differentiate or even cite the Bureau's previous adverse decisions. Accordingly, the MVPD Petition should be rejected.

⁴⁶ Civil No. C-96-64 (S.D. Tex. Feb. 2, 1996); *see* MVPD Petition at 9 n.28 and accompanying text.

⁴⁷ *See, e.g.*, TWC Petition to Deny Application of ACME Television Licenses of Ohio, LLC, at n.39 and accompanying text (Oct. 22, 2010) (raising *Texas Television* argument, which was rejected in the *ACME TV Licenses* decision); *High Maintenance* at 2 n.5 (rejecting invocation of *Texas Television* as "disingenuous").

* * *

This simply is not the appropriate forum to seek changes to the ownership or retransmission consent rules. Longstanding precedent shows that the Bureau correctly declines efforts to persuade it to change Commission rules in a review of a routine transaction and demonstrates that the Commission itself follows the same approach. Accordingly, and for the reasons set forth above, the Bureau should promptly deny or dismiss the IPR Petition and the MVPD Petition and grant the applications.

Respectfully submitted,

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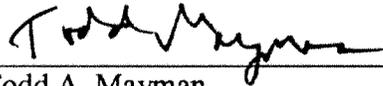
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Adrienne Denysyk, Media Bureau (via e-mail)

DECLARATION OF TODD A. MAYMAN

I, Todd A. Mayman, do hereby declare under penalty of perjury:

1. I am the Senior Vice President, General Counsel, and Secretary of Gannett Co., Inc.

2. I have read the foregoing Opposition to Petitions to Deny, and the facts stated therein, of which the Federal Communications Commission may not take official notice, are true and correct to the best of my knowledge and belief.



Todd A. Mayman

Date: 8/8/13

CERTIFICATE OF SERVICE

I, Floretta Bates, a secretary at Covington & Burling LLP, hereby certify that on this 8th day of August, 2013, I caused a copy of this Opposition to Petitions to Deny to be served by U.S. First Class mail, postage prepaid, upon the following:

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